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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/862,853	05/22/2001	Gary Jensen	AGI2-PT002.1	8372

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EXAMINER

TRAN, KHOA H

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 11/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/862,853

Applicant(s)

JENSEN ET AL.

Examiner

Khoa Tran

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--- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09/04/02.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 2 and 7-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07/05/01 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Election/Restrictions

Applicants' election with traverse of Group I and Species III, Figures 1a, 9 and 10, in Paper No. 6 is acknowledged. Applicants' traversal on the ground that a search of the method subject matter must be made in order to provide a thorough search of the Group I product and that the search and examination of the method does not increase the burden on the examiner relative to only searching and examining the product of Group I. Neither of these arguments have been found to be persuasive. First, applicants have failed to show that a coextensive search is a reason for not requiring a restriction requirement. Second, no reasoning has been provided as to why the method must be searched and examined in determining the patentability of the product, especially when patentability of the product is based solely on the structural recitations thereof. Third, the general self-serving statements that there is no increased burden on the examiner is not well-taken in light of applicants' failure to identify any errors in the examiner's reasoning for restriction. What is the basis for applicants' conclusion of no increased burden? Are applicants asserting that the method of Group II is obvious on its face and that the examiner need not apply prior art that specifically meets each and every method step recited? Is it applicants' position that no arguments for the separate patentability of the method will be made or that the examiner need not consider and respond to any such arguments that would be made? Nevertheless, it is clear that there is a serious burden on the examiner to have to search and examine two patentably distinct inventions in the same application, especially when the patentability of method and product claims are based on two different sets of criteria.

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With respect to the requirement to elect a single patentably distinct species, applicants' only traverse the holding that claims 1, 7, and 10 are not generic claims. No reasoning has been provided by applicants regarding why this holding is considered improper. Any proper traverse must include specific reasons as to why the holding is in error. Accordingly, there is no argument for the examiner to respond to. Nevertheless, it should be noted that claim 10 is a method claim (non-elected) and is not now under consideration. Relative to claim 7, only the first identified species has been disclosed as possessing "a series of pin receptacles". Accordingly, claim 7 cannot be properly considered to be a "generic" claim. Upon further consideration of claim 1, it is deemed that claim 1 constitutes a generic claim.

Claims 2 and 7-17 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 6.

Drawings

The drawings are objected to because they fail to show reference numeral "51a" as described on page 5, line 4. Correction is required. Applicants are required to submit a proposed drawing correction in reply to this Office action.

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Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 3-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Ehrlich. The claims are of such breadth that they read on the product display rack of Ehrlich. Ehrlich discloses a product display rack comprising an upper edge portion (34) spaced apart from the lower edge portion (36); an upper hinge member including a pin (34a) secured to the upper edge portion; the pin is dimensioned to receive in a pin receptacle (19a) of a wing type display (19); a first portion and a second opposing portion (81 and 82) between the upper edge portion of the product sample is secured with the pin (34a) that extends outwardly away from the product sample upper edge portion; and

a lower hinge member including a pin (36a) associated with a lower edge portion (36); the lower edge portion (81 and 82) of the product sample associated with the lower hinge member for support with the lower member pin (36a) extending outwardly away from the product sample lower edge portion, such that the rigidity of the product sample maintains a selected spacing of the upper and lower member pins (34a and 36a). See Figures 1-4b.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tenser et al. in view of L. H. Best. Tenser et al. disclose a product display comprising an upper edge portion (52) spaced apart from the lower edge portion (52); each edge portion defines a wing type display (64 and 66) that has a plurality of pin receptacles (72 and 74) on the wing display; a plurality of hinge members, each having a projected pin member (58) receives in a respective pin receptacles and arms (60 and 62) that define a slot therein between. See Figures 1b and 1c. The hinge member of Tenser et al. is not a bar type hinge member that has screws securing therethrough. However, Best teaches a bar type hinge member (12) having screws (25) secured therethrough. See Figures 1 and 2. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the product display of Tenser et al. with the bar type hinge member as taught by Best in order to have a hinge member that is easy for a product to install and remove therefrom.

The prior art made of record and not relied upon is considered pertinent to applicants' disclosure. Hunn, Neustat et al., McGrath, Jr., Hagopian, Marino, Kritske, and O. K. Schneider are cited to show devices having similar configurations of design.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa Tran whose telephone number is (703) 306-3437. The examiner can normally be reached on Monday through Thursday from 8:30 A.M. to 7:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola, can be reached on (703) 308-2686. The fax phone number for this Group is (703) 305-3597 or (703) 305-3598.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

If the applicant is submitted by facsimile transmission, applicant is hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and M.P.E.P. 502.02). In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check **should not be** submitting by facsimile transmission separately from the check. Responses submitted by facsimile transmission should include a Certificate of Transmission (M.P.E.P 512). The following is an example of the format the certification might take:

I hereby certify that this correspondence is being facsimile transmitted to the
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Fax No. _____ On _____

(Date)

Type or printed name of person signing this certificate:

(Signature)

Furthermore, please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

Khoa Tran
November 15, 2002



DANIEL P. STODOLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600